

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

REGION 27

SEARS HOLDING CORPORATION¹

Employer,

and

Case 27-RC-8442

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 68

Petitioner.

DECISION AND DIRECTION OF ELECTION

On May 8, 2006, International Brotherhood of Electrical Workers, Local 68 (Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act, as amended, (the Act) seeking to represent certain employees employed by Sears Holding Corporation (the Employer). As amended at the hearing, the petition seeks a unit of all full-time in-home service technicians and parts sweepers employed by the Employer in its district 8181, but excluding all gas repair center employees, office clerical employees, confidential employees, managerial employees, guards and supervisors within the meaning of the Act, and all other employees. On May 23 and 24, 2006, a hearing was conducted before a Hearing Officer of the National Labor Relations Board (the Board).

This proceeding presents the following issues for resolution: (1) whether the petitioned-for unit limited to all full-time in-home service technicians and parts

¹ The name of the Employer appears as amended at the hearing.

sweepers employed in the Employer's district 8181 is appropriate; (2) whether the unit must include all service technicians and support associates employed in district 8181; and (3) assuming the unit must include all service technicians and support associates, whether part-time service technicians and support associates should be included in the unit.

The Petitioner contends that the petitioned-for full-time service technicians share a sufficiently distinct community of interest to constitute an appropriate unit in and of themselves. The Employer argues that the service technicians share such a strong community of interest with the support associates in district 8181, also called the Northglenn district, that the smallest appropriate unit consists of all full-time and regular part-time service technicians and support associates in the district.

Having considered the evidence and the arguments presented by the parties, as discussed in detail below, I find that the service technicians share such a strong community of interest with the support associates employed in District 8181 that they do not have a distinct separate identity. I further find that the only appropriate unit consists of all full-time and regular part-time service technicians and support associates² employed by the Employer in its District 8181, excluding all gas repair center employees, office clerical employees³, confidential employees, managerial employees, guards and supervisors as defined in the Act.

²The support associate category includes the parts sweeper classification sought by the Petitioner.

³As discussed in more detail *infra*, I find that the timekeeper and the audit cashier are office clerical employees and I shall exclude them for the unit found appropriate.

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find :

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a New York corporation with its corporate headquarters and principal place of business located in the State of Illinois, is engaged in the retail and product services industry. During the past 12 months, the Employer has received gross revenues in excess of \$500,000 and during the same period of time it has purchased and received goods and materials at its Colorado locations valued in excess of \$50,000 directly from points located outside the State of Colorado. Based on these facts, I find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

5. It is appropriate to direct an election in the following group of employees:

INCLUDED: all full-time and regular part-time service technicians and support associates employed by the Employer in its district 8181;

EXCLUDED: all gas repair center employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

The Facts

The Employer operates retail stores and service facilities throughout the United States. Its product repair services division is primarily engaged in repairing and servicing appliances and other merchandise in customers' homes or in its own repair shop facilities. The repair and service work is performed by service technicians. In addition, the Employer also sells over-the-counter replacement or repair parts to customers performing their own repairs.

The Employer's product repair services division is divided into approximately 47 districts throughout the United States. Included among these is the Northglenn Product Services District, or District 8181. The Northglenn District covers most of Colorado, most of Wyoming and a part of Nebraska. It consists of a headquarters facility located in Northglenn, Colorado, six branch facilities, and an outlet facility. The branch facilities are located in Aurora, Littleton, Lakewood, Fort Collins, and Colorado Springs, Colorado, and Casper, Wyoming. Each of the branch facilities, and the Northglenn facility, has a sales floor containing appliance repair parts for sale to customers and a sales counter where customers can purchase parts, ask questions about repairs and drop off merchandise for repair. Each location also has a shipping/receiving area, parts

storage area, repair area, and a break room. The outlet facility is located in Denver, Colorado. It is a “scratch and dent” facility and three service technicians work there doing repairs on kitchen appliances.

A. Management Structure of the Northglenn District

Frank Mufic is the district service general manager of the Northglenn District. In this position, Mufic is in overall charge of the entire Northglenn District operation and its entire workforce, including service technicians, support associates and managers. Thus, Mufic is responsible for determining the employee complement and approving all hires. He must approve all performance evaluations, written disciplinary actions and discharges.

Brian Varner is the district operations manager. He has his office at the Northglenn facility and he reports directly to the district service general manager. He is responsible for all expenses and financial matters in the district. As district operations manager, he is responsible for the Employer's truck fleet and making sure that the trucks are safe, licensed and maintained. It is his responsibility to ensure that unneeded parts are returned and proper refunds are obtained. Varner is also responsible for ensuring that certain tools and meters are correctly and timely calibrated in compliance with International Standard Organization (ISO) standards. He is also responsible for purchasing tools used by the service technicians and for the over-the-counter sales in the branch facilities.

Erin Williamson is the district human resources generalist or manager. In this capacity, she is responsible for human resources matters involving all district employees, including both service technicians and support associates. She

participates in the hiring process of all employees, including employee recruitment, job advertising, applicant interviews, and new employee orientation. She is also responsible for the administration of pre-employment tests, including psychological and drug testing, as well as a background check for all applicants. In addition to hiring, the human resources manager is also involved in all disciplinary matters and employee evaluations.

The Employer employs six technical managers within the Northglenn District who report directly to the district service general manager. Four of the technical managers are located at the Northglenn facility. One technical manager is located at the Colorado Springs branch and one at the Fort Collins branch. The technical managers directly supervise the service technicians. At the Colorado Springs and Fort Collins branches, the technical manager supervises all of the service technicians assigned to that branch.⁴ In contrast, the four technical managers based at the Northglenn facility supervise service technicians in the Denver metro area according to the service technicians' industry specialty. Thus, Ray Figueroa supervises service technicians specializing in merchandise or appliances associated with lawn and garden, cooking, dishwashers/compactors. Craig Peterson supervises service technicians involved with laundry and HVAC. Mike Guren supervises service technicians involved in refrigeration. Ray Patch supervises service technicians

⁴Pam Peterson is the technical manager at the Fort Collins branch. Currently, Peterson supervises the service technicians assigned to both Fort Collins and Casper, Wyoming. This assignment is temporary until the position of branch manager at the Casper location is filled. Historically, the Casper branch manager supervises both the parts sales associates and the service technicians assigned to the Casper branch.

involved in home electronics.⁵ Each of the technical managers supervises approximately 20 to 25 service technicians. As a general rule, the technical managers hold bi-weekly meetings with the service technicians whom they supervise.

Branch managers are assigned to the Employer's branch facilities in Casper⁶, Aurora, Littleton, and Colorado Springs. They are responsible for the overall operation of their respective branch facility. There is also a branch sales manager at the Northglenn facility. In addition, there are branch lead employees at the Lakewood and Fort Collins branches.⁷ Each of these positions reports directly to the district operations manager. At each of the branches, the parts sales associates report directly to the branch manager or branch lead, as the case may be.⁸

At the hearing, the parties stipulated to the supervisory status of the district service general manager, district operations manager, district human resources manager, technical managers, branch managers and sales managers. Based on the stipulation of the parties and the entire record, I find that these positions are supervisory and I shall exclude them from the unit.

B. Employee Job Classifications and Functions

1. Service Technicians

⁵Patch also supervises the three service technicians assigned to the outlet center. He also supervises A&E service technicians who are responsible for performing repair work on third-party merchandise such as Whirlpool and Frigidaire appliances.

⁶As noted above, this position was vacant at the time of the hearing.

⁷Neither party contends that the branch leads are supervisors. However, neither party seeks their inclusion in any appropriate unit.

⁸As noted above, both the parts sales associates and the service technicians report directly to the Casper branch manager.

The Employer employs approximately 136 service technicians in its Northglenn District.⁹ They are primarily responsible for diagnosing and repairing appliances and other merchandise, generally in the customer's home.¹⁰ Most of the service technicians specialize in the repair of certain kinds of merchandise, e.g., HVAC, refrigeration, lawn and garden, laundry appliances, cooking appliances, home electronics. However, the service technicians at the Colorado Springs, Fort Collins and Casper branches are generalists and they do repairs on all types of appliances with the exception of home electronics equipment. In addition to repair work, the service technicians are also responsible for attempting to sell service protection agreements, water filters and preventative maintenance checks to customers.

Prior experience or a background in repair and technical work is not a requirement for the entry level service technician position, and the Employer has hired service technicians with no prior experience. However, service technicians are given a basic electricity test and perhaps another examination if they are seeking a specialized technician position.

Since 2001, most of the service technicians in the district begin their workday from their homes.¹¹ Most of the service technicians are issued handheld computers called Sears Smart Tools or SST's.¹² The service

⁹All but one of the service technicians are full-time employees. The one part-time technician works in Colorado Springs and is scheduled to work about 20 to 30 hours each week.

¹⁰As noted above, the three service technicians assigned to the outlet center repair kitchen appliances at that location. In addition, service technicians do some repairs at the branch locations when customers bring in their merchandise.

¹¹Only 12 of the service technicians park their trucks at a branch facility and begin and end their workday at that branch facility. The other service technicians take their trucks home and begin their workday from home.

¹²The three service technicians at the outlet center do not utilize SST's.

technicians' service routes are created, monitored and updated by the Employer's region routing center in Dallas, Texas. Each evening, the service technician's route for the next day is downloaded from the region routing center to the service technician's SST. When the service technician logs on to the SST the next morning, the route for that day is presented to the service technician. In addition, the service technician can use the SST to order parts needed for a repair through the Library Imaging System. The SST can also be used for text communications between the service technician, the routing center, and support associates, such as customer relations associates. The service technicians are also issued a cell phone which they use to communicate with their technical manager, support associates, customers, and other service technicians.

The service technicians make service calls using the Employer's trucks, tools and parts. The tools and parts vary depending upon the service technician's industry specialty. Most of the service calls are performed in customer's homes and most of the calls are done by a single service technician. Less than 1% of the service calls are two-man or helper calls. The service technicians are able to complete most of the service calls using new parts stocked on their trucks. When a part is used, the service technician will enter this information into his SST and a replacement part is automatically ordered and sent to him. For the service technicians who begin work from their homes, the replacement parts are delivered to their homes. For those service technicians who leave their trucks at a branch facility, their replacement parts are delivered to that branch. These service technicians will go to the branch three or four times

per week to pick up delivered parts. When a part needed for a repair is not on the service technician's truck, he will generally order the part using his SST. He will then schedule a return appointment with the customer. The ordered part is usually sent directly to the customer's address. However, ordered parts that are too big or that contain hazardous materials are sent to a customer's address. Instead, these parts are sent to the Northglenn facility or to a branch facility nearest the service technician. The service technician will then go to the facility to pick up the part.

In lieu of ordering a needed part through the SST, the service technician can call the parts sweeper and request that the parts sweeper deliver the necessary part. In addition, the service technician could go to a parts supplier and purchase the necessary part. Or, the service technician can go to a Sears branch location and obtain the needed part from the branch inventory. In this latter event, the service technician will work with a parts sales associate in the branch to have the part removed from the branch inventory and added to the district inventory. The service technician would then be free to take the part.

In addition to picking up needed parts, the service technicians will go to the branch facilities or the Northglenn facility to drop off unneeded parts. Thus, used parts or new parts not needed on a service call are labeled by the service technician with an orange sticker and are then taken to a branch or to Northglenn so they can be processed and returned for a refund.¹³ Service technicians also go to a branch facility or to the Northglenn facility to drop off trash, to attend bi

¹³ The parts returned to a branch facility are placed on a shuttle and taken to Northglenn where all of the returned parts are processed by support associates.

weekly crew meetings, or to perform repairs on merchandise brought in by customers.

Service technicians generally have no personal contact with each other unless they pass each other while driving their routes or happen to be at a customer's home servicing different appliances. Some service technicians call each other for advice or instruction while on a service call. However, the record indicates that this contact is minimal.

2. Support Associates

Support associates are divided into specific job classifications based on their primary job responsibility. They all have some job responsibilities that are directly related to assisting the service technicians in providing repair services. Many of the support associates are cross-trained and they assist or substitute for one another. The support associates at issue in this proceeding are: customer relations associates, shipping/receiving associates, support specialist II, parts sales associates, audit cashier, and timekeeper.

a. Customer Relations Associates

There are three customer relations associates stationed at the Northglenn facility. They report directly to the district operations manager. Their primary function is to facilitate communication between the customers and the service technicians. Between the three of them, the customer relations associates receive about 100 to 120 calls per day.

The customer relations associates receive calls from customers inquiring about where the service technician is and when he or she will be arriving at the

customer's home. In those instances, the customer relations associate contacts the service technician by cell phone or through the SST to obtain the requested information. The customer relations associates take calls from customers about refunds or overcharges. They will also take complaints from customers about service technicians' work or behavior. In those instances, the customer relations associate fills out a customer resolution form listing the complaint and forwards that to the appropriate technical manager. The customer relations associates also take calls from National Customer Relations which relays customers' inquiries and complaints to the local customer relations associates.

The service technicians call the customer relations associates on a regular basis. The service technicians call to find out the status of a part required for a repair. The service technician could also ask the customer relations associate to create a new service order for a repair that was just requested by the customer. The customer relations associate could also provide the service technician with information about work previously performed on a customer's appliance. The customer relations associate would obtain this information from the National Parts and Service (NPS) data base utilized by the Employer. The service technicians have access to the NPS system, but their accessibility is limited to the last 30 days whereas the customer relations associate can obtain a broader range of information. The customer relations associate can also use the NPS system to place a message for the service technician on the message screen associated with a particular service order. The message left by the customer

relations associate frequently relays information from a customer to the service technician such as the need to reschedule an appointment.

As noted above, the three service technicians at the outlet center do not utilize SST's. Instead, their repair work is done using paper service orders and paper records. The customer relations associates are responsible for inputting the information regarding these repairs into the computer system. In the event a service technician's SST goes down, the customer relations associates perform this same function for the other in-home service technicians.

b. Shipping/Receiving Associates

There are approximately four employees classified as shipping/receiving associates, all of whom work at the Northglenn facility.

Pat Daniels and Arlene Medina are full-time employees. They are responsible for shipping out parts to the branch facilities, tools to be calibrated, and appliances sent out for repair. They also receive replacement parts for the approximately six service technicians who park their trucks at the Northglenn facility. These replacement parts are put in a designated area where the service technicians will come in and pick them up. The shipping/receiving associates receive parts for customers to pick up. They also take receipt of repair parts that are too big to be shipped directly to a customer's residence. These parts are then stored in a designated area of the facility until the service technician is ready to complete the scheduled repair. When the shipping/receiving associates are on vacation, two of the parts sales associates at the Northglenn facility fill in for

them. Pat Daniels will also occasionally fill in for a parts sales associate on the sales floor.

Joe Stapleton works about 9 to 10 hours a week as a shipping/receiving associate. He works three days a week and approximately three hours per day. His main function is to make sure that all of the parts ordered for a customer repair are received and available before the scheduled service call is made by the service technician. He places the received parts in the appropriate bins where they can be located and obtained by the service technician.

Alice Yasimura is classified as a shipping/receiving associate or a support specialist II. She is a part-time employee and works about 30 hours per week. She is responsible for receiving all of the orange sticker parts that are returned by the service technicians. As noted above, these are the used parts removed during a repair or new parts not needed for a repair. She also receives all of the parts that are periodically deleted from the parts stock of the service technicians' trucks. After receipt of these parts, Yasimura will place them on pallets and ready them to be shipped to the Employer's parts distribution center in Dallas, Texas.

c. Support Specialist II

It appears from the record that Lisa Rodriguez is currently classified as a support specialist II. She is full-time and is stationed at the Northglenn facility. Her primary responsibilities involve reviewing or auditing the truck stock inventory of parts on the service technicians' trucks, and also participating in the required calibration of service technicians' tools and meters.

Rodriguez conducts bi-annual inventories of the truck stock parts for each of the approximately 136 service technicians in the district. The purpose of the inventory is to ensure that the correct type and number of parts are on each service technicians' truck so that the parts they need for repairs are readily accessible. She will also ensure that any parts that should have been deleted from the truck stock are removed. She conducts these inventories at the Northglenn facility or at one of the branch facilities. Rodriguez establishes a yearly schedule of truck stock inventories and she then notifies the appropriate technical manager so that the truck is available for inventory on the scheduled day.

Rodriguez also participates in the tool and meter calibration process mandated by the International Standard Organization. She has access to a data base which lists the service technicians' tools and meters that are scheduled for calibration. She then notifies the appropriate technical manager and service technician of the need to recalibrate the tool or meter, asks the technician to send her the tool or meter, sends a replacement tool or meter to the service technician, and then sends the tool or meter to the Employer's lab in Dallas where the calibration takes place. After calibration is completed, the tool or meter is then returned to Rodriguez and she will send it back to the service technician.

The parts sweeper is stationed at the Northglenn facility.¹⁴ He assists the service technicians by locating parts and delivering them to the service technician for use in repairs. The parts sweeper also assists a service technician

on some service calls if help in moving or removing an appliance is required . However, the parts sweeper does not repair appliances, use tools, receive payment from customers, or perform any functions commonly performed by the service technicians.

d. Parts Sales Associates

There are approximately 37 parts sales associates employed by the Employer at the various branches and the Northglenn facility.¹⁵ The numbers at each location are:

Casper – Four (two full-time; two part-time);

Aurora – Six (two full-time; four part-time);

Littleton – Six (two full-time; four part-time);

Lakewood – Four (two full-time; two part-time); Fort Collins

– Five (two full-time; three part-time); Colorado Springs –

Five (two-full-time; three part-time); Northglenn – Seven or eight.¹⁶

The primary responsibility of the parts sales associates is to assist customers on the sales floor who wish to purchase parts or have appliances repaired. They are also responsible for selling protection agreements to customers. They receive the same 6% commission received by service technicians for the sale of protection agreements.

¹⁴ Both the Petitioner and the Employer would include the parts sweeper in any unit found appropriate.

¹⁵ At the hearing the parties agreed on the record that there were 27 parts sales associates employed within the district. This number is not consistent with the testimony set forth below regarding the numbers of parts sales associates employed at the various facilities. Accordingly, I consider the stated numbers of parts sales associates to be approximations.

¹⁶ The record does not indicate how many of these Northglenn parts sales associate are full-time or parttime. However, all of the part-time parts sales associates work at least 20 to 30 hours per week.

In addition to selling parts to customers, the parts sales associates also receive merchandise from customers who want the merchandise repaired. In that event, the parts sales associate will have the merchandise sent to a repair facility. On occasion, a customer will bring in an item that is too big to be shipped to a repair facility, such as a window air conditioner, a tractor engine, a large TV, or a snow blower. When this occurs, the parts sales associate will use the NPS system to create a service order for the repair. The repair work will be assigned to a service technician and he or she will come to the branch facility to affect the repair. After the merchandise has been repaired, the service technician attempts to contact the customer to come in and pick up the merchandise. If the technician is unable to contact the customer, then the matter is turned over to a parts sales associate who contacts the customer and arranges for the customer to come in to pick up their merchandise.

The branch parts sales associates are also involved in receiving parts that are too big or hazardous to be delivered to a customer's home. The parts sales associate will place the parts in a designated area. He or she will then notify the service technician that the part has arrived. If a service technician has not yet been assigned to do the repair, the parts sales associate will notify customer relations or the region routing center that the part has arrived and a service technician will be assigned. The technician then comes to the branch facility to pick up the needed part. This occurs from once a week to several times each week. The branch parts sales associates also receive parts for any service technicians who receive replacement parts at the branch.

The parts sales associates also deal with electronic equipment brought into the branch facility by a service technician who is unable to repair the merchandise. In that event, the item is turned over to the parts sales associate who creates a service order and then sends the merchandise to the repair center in Aurora, Colorado or a repair shop in Fontana, California. After the merchandise is returned to the branch, the parts sales associate sends a message to the technician to have the technician come into the branch and pick up the merchandise and return it to the customer. Most electronic equipment of this nature is kept in a locked room and the technician is required to get assistance from the parts sales associate to retrieve the merchandise.

The service technicians will also bring orange sticker parts to the branch facilities so they can be shuttled to the Northglenn facility and ultimately returned for a refund. When this occurs, the parts sales associates are sometimes required to place the parts in the designated area of the facility so that they can be loaded onto the shuttle.

The parts sales associates also create service orders for repairs for customers who come into the branch facility or who call on the phone. These service orders are then assigned to the service technicians. The parts sales associates will also receive calls from customers asking about the location of the service technician and they will send a message to the technician to call the customer.

e. Audit Cashier

The Employer employs one audit cashier who is stationed at the Northglenn facility. She is part-time and works about 20 to 24 hours a week.

She reports directly to the district operations manager. Her primary responsibility appears to be ensuring that the sales registers at the branch facilities are balanced. She also submits local bills for payment. The record does not indicate to whom these bills are submitted. On occasion, the audit cashier will also reimburse a service technician for miscellaneous expenses incurred, such as the cost of purchasing a part or washing their truck. Prior approval of a technical manager is required before reimbursement occurs.

The audit cashier works in a locked room at the Northglenn facility and the record indicates that she has little or no contact with any other employees.

f. Timekeeper

There is one timekeeper who is stationed at the Northglenn facility. She reports directly to the district operations manager. As part of her functions, the timekeeper will print out the missing punch report each morning and check to ensure that the previous day's clock punches for the service technicians were accurately recorded through the SST system. If any punches were omitted, the timekeeper will contact the technician through their SST and ask them to contact her to provide their correct hours of work. The timekeeper fixes approximately 10 to 12 of these missed punch problems per day.

In addition, the timekeeper works on reports for the district service general manager and the district operations manager. The record does not indicate the

nature of these reports. Also, the timekeeper produces the district newsletter, clears invoices, and makes sure that charges for parts ordered by the branches are correct.¹⁷ The timekeeper also works with the human resources manager on unspecified personnel issues, and she participates in new employee orientation. Finally, the timekeeper is responsible for keeping information regarding the total dollar value of the district inventory.

C. Personnel Policies, Benefits and Wages

For the most part, the Employer's personnel policies and employee wages and benefits are set at the national level. Generally, the same policies and procedures are applicable to both the service technicians and the support associates.

1. Policies

The hiring process for both service technicians and support associates is centralized at the district level. All hiring begins and ends with the district services general manager. Thus, the district services general manager decides whether additional employees need to be hired in any particular job classification. He then works with the human resources manager to construct a hiring recommendation which is made to the regional office in Dallas. Once this job requisition has been approved, human resources places an advertisement on Monster.com and also posts the position in the branches and on the Employer's intranet system. All applicants take the same pre-employment psychological and drug tests administered by human resources.¹⁸ In addition, each applicant is

¹⁷The timekeeper does not verify charges for parts ordered by the service technicians. ¹⁸All service technician applicants are also required to take a basic electricity test.

subjected to a background check. Final approval of all hires must come from the district services general manager. Once hired , all new employees go through the same orientation process regardless of job classification. During this orientation process, all new employees receive the same Associate Code of Conduct and Leadership Principles documents.

The same attendance policy, performance improvement program and disciplinary policy applies to all service technicians and support associates in the district. The district services general manager must approve all written discipline and performance improvement programs for all employees in the district. The technical managers and branch managers do not have the unilateral authority to impose written discipline. All such matters must first be presented to the human resources manager and, ultimately, the district services general manager.

All service technicians and support associates receive mid-year and end-of-year performance reviews. Both classifications are reviewed, in part, on the same criteria, referred to by the Employer as “leadership skills”. In addition, both the service technicians and the support associates are evaluated on their performance in selling protection agreements. Merit increases for both classifications are tied to the results of the performance reviews. All performance reviews are submitted to the district services general manager and he has the final say on all employee evaluations.

The Employer maintains a “light duty” program as part of its Workers’ Compensation program. The light duty program applies to both service technicians and support associates. The record shows that during the last year,

nine service technicians were assigned to light duty assignments. Typically, a service technician placed on light duty is assigned to a clerical position, a parts sales associate position, a customer relations associate position or a parts runner position. In addition to these temporary assignments, there have been some infrequent permanent transfers between classifications. Thus, there have been at least two instances of parts sales associates permanently transferring to service technician positions and at least one instance of a service technician permanently transferring to a parts sales associate position.

2. Benefits

All full-time service technicians and support associates are eligible for the same benefits. These include health care, dental care, 401(k), vacation, sick leave, personal days, life insurance, commuter benefits and disability. Part-time service technicians and support associates do not receive the same benefits. Thus, part-time employees are not eligible for health care, dental care, disability, life insurance, personal days or commuter benefits. They are eligible for vacation only after having worked at least 1000 hours in the previous year. They receive only Christmas and Thanksgiving as national holidays.

3. Wages

All service technicians and support associates are hourly paid. The wage range of service technicians is from \$14/hour (refrigeration tech) to \$28/hour (home electronics tech). The wage range for support associates is from \$7.75/hour to \$17.01/hour. Both service technicians and support associates are paid every two weeks on the same day and both have the option of picking up

their checks at the branch office, having it mailed to their home, or having it directly deposited to their bank account.

Analysis

Under Section 9(b) of the Act, the Board has broad discretion to determine the unit appropriate for the purposes of collective bargaining in each case “in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act.” *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494-497 (1985). The Board has the discretion to select an appropriate unit from the range of units which may be appropriate in any given factual circumstance. It need not choose the most appropriate unit or the only appropriate unit. *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). For the reasons set forth below, I find that the Petitioner’s requested unit limited to all full-time service technicians in the Northglenn District is, under all the circumstances, not an appropriate unit. Instead, I find, based on my consideration of the entire record, that the support associates in the Northglenn District, with the exception of the timekeeper and the audit cashier, share such a significant community of interest with the service technicians that they must also be included in the unit with the service technicians.

In determining what constitutes an appropriate unit, the key question is whether the employees share a sufficient community of interest. *Continental Baking Co.*, 92 NLRB 777, 782 (1952); *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994). In making this determination, the Board weighs a variety of factors, including (1) the extent of integration of operations, (2) centralized managerial

and administrative control over daily operations and labor relations, (3) geographic proximity, (4) similarity of working conditions, skills and functions, (5) the degree of employee interchange, and (6) collective bargaining history. *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163, 167 (3d Cir. 1986); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). No one of the above factors has controlling weight and there are no *per se* rules regarding the inclusion or exclusion of any classification of employees in any unit. *Airco, Inc.*, 273 NLRB 348 (1984).

The record clearly shows that the Employer's district service operation is highly integrated. All of the support associates, to varying degrees, perform job functions that are integrated with the job functions of the service technicians. Thus, the customer service associates' primary job functions are designed to directly support the work of the service technicians. They have regular contact with the service technicians by phone or SST. They provide information to the service technician about the status of required parts or give them information about the repair history of a particular appliance. They act as a communication conduit between the service technician and the customer. They are also involved in resolving customer complaints and questions regarding the work of the service technicians. Likewise, the parts sales associates and the shipping/receiving associates engage in job functions that directly support the job activities of the service technicians, including processing used or unneeded parts and merchandise returned by technicians, receiving and staging replacement parts for some of the technicians, receiving and staging parts needed for appliance repairs, and providing technicians with needed supplies and parts.

The support specialist II who is engaged in auditing truck inventory and tool calibration also directly supports the work of the service technicians. Obviously, ensuring that their trucks contain the necessary inventory of replacement parts and that their tools and meters are correctly calibrated assists the technicians in making prompt and efficient repairs, criteria on which technicians are evaluated.

The functional integration between the service technicians and the support associates results in interchange and interaction between them. In fact, service technicians typically have more day-to-day communication with support associates than they do with other service technicians. Although the contact and communication between the service technicians and the support associates is somewhat limited and is often not face-to-face, the degree of functional integration between the classifications makes it evident that the service technicians could not do their jobs without the assistance of the support associates. The work performed by the support associates is directly related and integral to the work of the service technicians. The Board traditionally gives the degree of functional integration and the interdependency of work responsibilities significant weight in determining the appropriateness of a petitioned-for unit. *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999); *Threads-Incorporated*, 191 NLRB 667 (1971). Here, the evidence of functional integration and interdependency of work duties and responsibilities shows that the petitioned-for full-time service technicians do not share a sufficiently distinct community of interest separate and apart from the support associates. Instead, the evidence of functional integration shows that the service technicians and the support associates share a

community of interest sufficient to warrant their inclusion in the same bargaining unit.

The evidence also shows that there is centralized control over daily operations and labor relations within the Northglenn District. The service technicians and support associates share many common terms and conditions of employment. Thus, employee benefits, personnel policies and the general wage structure are set nationally and are, therefore, applicable to both classifications of employees. In addition, the district services general manager and the district human resources manager oversee all new employee recruitment, hiring and orientation. Finally, all decisions regarding written discipline, performance improvement programs and evaluations are centralized at the district level. The evidence shows that there is little or no autonomy regarding the employees' terms and conditions of employment exercised by the immediate supervisors.

With regard to the similarity of working conditions, employee skills and functions, the evidence shows that the service technicians have different job skills and job functions than do the support associates. The service technicians also have generally higher wage rates. Moreover, the technicians usually work at customers' homes rather than at the branch facilities as do the support associates. However, the evidence also shows that the service technicians and the support associates share many common terms and conditions of employment, that the support associates are eligible to transfer to service technician positions and that some have, in fact, done so, and that prospective service technicians are not required to have any prior technical experience or

technical knowledge. In addition, the evidence shows that some of the service technicians are required to go to the branch facilities to perform in-shop repairs, pick up parts and supplies, drop off unused parts, dispose of trash, attend employee meetings, and talk to their technical manager. Also, the evidence shows that service technicians and support associates are in contact with each other through the use of the SST's and cellular telephones. And, as discussed above, there is a high degree of functional integration between service technicians and support associates. Thus, the significance of the differences in working conditions, skills and job functions between the service technicians and the support associates is diminished by the common factors shared by the two classifications. In view of the similarity of working conditions and the significant functional integration between the service technicians and the support associates, I find that the differences are insufficient, on balance, to support a finding that a unit limited to full-time service technicians in the Northglenn District is appropriate.

While not overwhelming, there is at least some evidence of employee interchange in the form of permanent transfers between the support associates and the service technicians. Moreover, some service technicians have served light duty assignments in support associate positions. Accordingly, the appropriateness of the petitioned-for unit is not supported by a total absence of employee interchange between the technicians and the support associates. Instead, although minimal, the evidence of interchange supports the conclusion

that a unit including both technicians and support associates is the only appropriate unit.

The various branch facilities and the Northglenn facility do not share geographic proximity. Thus, the distances between the branch facilities and the Northglenn facility range from approximately 285 miles (Casper) to approximately 13 miles (Aurora). However, the evidence indicates that the district is the Employer's smallest, relatively autonomous administrative unit. Moreover, neither party contends that a unit smaller or more proximate than the Northglenn District would be appropriate. Accordingly, I conclude that the absence of geographic proximity between the various facilities is not a significant factor for consideration in this matter.

Lastly, there is no evidence of any bargaining history between the parties with regard to any employees in the Northglenn District.

In sum, my consideration of all of the above factors leads me to the conclusion that the Petitioner's requested unit of all full-time service technicians in the Employer's Northglenn District is not appropriate. The evidence shows that the service technicians alone do not share a sufficiently distinct community of interest from the support associates to warrant a separate unit. Instead, the evidence as a whole convinces me that the only appropriate unit is one including both the service technicians and support associates employed by the Employer in its Northglenn District. Further, I conclude, contrary to the position of the Petitioner, that the appropriate unit must also include all regular part-time service technicians and support associates. The evidence shows that the part-time

technician and the part-time support associates perform work within the unit on a regular basis for a sufficient period of time during each week to demonstrate that they have a substantial and continuing interest in the wages, hours and working conditions of the full-time employees in the unit found appropriate. Thus, the evidence shows that all of the part-time employees work a regular schedule of at least 9 to 10 hours per week.¹⁹ In addition, the evidence shows that all of the part-time employees perform the same job duties and functions as those of the full-time employees. While the part-time employees do not receive the same benefits as do the full-time employees, they share common supervision and other working conditions such as attendance policy, disciplinary policy and wage structure. Accordingly, I find that the regular part-time service technician and regular part-time support associates share a sufficient community of interest with the full-time employees to warrant their inclusion in the unit. *New York Display & Die Cutting Corp.*, 341 NLRB 930 (2004); *Arlington Masonry Supply, Inc.*, 339 NLRB 817 (2003).

As opposed to the other support associates, I find that the timekeeper and the audit cashier do not share a community of interest with the service technicians or the other support associates and should, therefore, be excluded from the unit found appropriate. Their duties relate to administrative or personnel matters and they perform no role related to the repair of appliances or the sale of parts. Thus, the only contact that the timekeeper appears to have with any unit employees is with regard to the missing time clock punches of the service technicians. Beyond that, she works on reports for the district services general

¹⁹ In fact, all but one of the part-time employees works approximately 20 to 30 hours per week.

manager and the district operations manager, produces the district newsletter, clears invoices and makes sure that charges for parts ordered by the branches are correct, works on personnel matters with the human resources manager, and participates in new employee orientation. The audit cashier appears to have contact with any unit employees only "once in a while" when she reimburses a service technician for expenses such as washing his truck. She works in a locked room and has little or no contact with any other employees. In these circumstances, I find that the timekeeper and the audit cashier are office clerical employees who do not share a sufficient community of interest with the employees included in the unit. Accordingly, I shall exclude them from the unit found appropriate.

The unit which I have found to be appropriate here is broader than the unit sought by the Petitioner. At the hearing, the Petitioner stated its desire to proceed to an election in the broader unit if it were found to be appropriate.²⁰

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and

²⁰The conduct of an election in this matter is conditioned upon a determination that the submission of showing of interest is adequate for the expanded unit. Accordingly, pursuant to Sections 11031.1 and 11031.2 of the Casehandling Manual, Part Two, Representation Proceedings, and inasmuch as the Petitioner has indicated a willingness to participate in an election in an expanded unit, the Petitioner may submit any additional showing of interest in support of an election in the expanded unit by no later than 5 p.m., Friday, July 14, 2006. Such additional showing of interest may not be submitted by facsimile transmission.

Regulations.²¹ Eligible to vote are those in the unit who are employed by the Employer during the payroll period ending immediately preceding the date of this Decision and Direction of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have maintained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the designated payroll period: who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by:

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 68²²**

²¹ Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

²² Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by July 14, 2006. In accordance with Section 102.67 of the Board's Rules and

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days from the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-5433, on or before **July 12, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado, this 30th day of June, 2006

Michael W. Josserand, Regional Director
Michael W. Josserand, Regional Director
National Labor Relations Board Region 27
700 North Tower, Dominion Plaza
600 Seventeenth Street Denver,
Colorado 80202-5433